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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,519	05/04/2001	David G. Beshore	38190/233565	7542
826	7590	05/10/2007	EXAMINER [REDACTED]	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			LOFTIS, JOHNNA RONEE [REDACTED]	
			ART UNIT [REDACTED]	PAPER NUMBER 3623
			MAIL DATE 05/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/848,519	BESHORE, DAVID G.	
	Examiner	Art Unit	
	Johnna R. Loftis	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 February 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. The following is a final office action upon examination of application number 09/848,519. Claims 1-20 are pending and have been examined on the merits discussed below.

Response to Arguments

2. Applicant's arguments filed 2/28/07 have been fully considered but they are not persuasive. Currently, Applicant is arguing the inherency of information concerning the organization and the process. Examiner again points to the Wilkinson reference. The principles that are considered concern the organization and the process. As claimed, any such information that concerns any organization and/or process reads on the limitation of the claim. As for acquiring the information, the mere fact that the information is included in the assessment proves the information was previously acquired so as to enable the assessment to take place.

3. As for Applicant's argument regarding strength/weakness characterizations, Examiner explains that in claims 1-14, the preliminary findings are developed and voted upon. The characterization, specifically the label (strength or weakness), has no affect on the methodology and therefore is considered non-functional data. The steps would be performed in the same manner regardless of the characterization and/or label of the preliminary finding. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material does not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106*. In claims 15-20, the preliminary findings are developed and characterized, wherein the characterization is voted upon for

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agreement or disagreement. As Applicant points out in arguments on page 13, the characterizations are traits or qualities (here, of the organization and the process). Examiner points out that the principles considered in Wilkinson are traits (and thereby characterizations) of the organization and process.

4. All previous rejections are upheld based on the fact that the preliminary findings are voted upon for agreement/disagreement and the claimed label has no affect on the outcome of the vote.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the WAGICS Evaluation Report.

As per claim 1, WAGICS Evaluation Report teaches acquiring information concerning the organization and the process (table 3, page 6 – the principles that are evaluated are inherently reflective of the organization and the process); developing a plurality of preliminary findings based upon the information, developing the plurality of preliminary findings including characterizing and labeling each preliminary finding with an associated characterization selected from a group consisting of a strength and a weakness (table 3, page 6 – the principles that are evaluated are reflective of the organization and the process and are inherently characterized as

strengths or weaknesses); voting for a conclusion associated with each preliminary finding, and wherein the conclusion associated with each preliminary finding is selected from a group consisting of an agreement with the preliminary finding and a disagreement with the preliminary finding (table 3, page 6 – participants assess their agreement or disagreement with each of the principles); and developing a plurality of final findings, developing the plurality of final findings including characterizing and labeling each final finding with the characterization, and wherein the plurality of final findings are based upon said voting for the conclusion associated with each preliminary finding (table 3, page 6 – the table reflects the final findings wherein percentages are used to show overall agreement or disagreement with each of the principles). While the WAGICS Evaluation Report does not disclose that the voting occurs electronically, it is old and well known in the art of survey and evaluation to collect responses in several methods including electronic form. It would have been obvious to one of ordinary skill in the art to perform the voting step electronically to speed the process and to make the voting process more convenient for the participants. In addition, WAGICS does not explicitly teach that the findings are labeled with the characterizations. However, examiner takes official notice that since each finding in the WAGICS report is written in such a way so as to include an inherent characterization, i.e., “suggested reading were *useful* in accomplishing workshop goals” inherently conveys a strength, it would have been obvious to one of ordinary skill in the art to actually label the findings. The inclusion of a label would provide more information for the assessor to enable him or her to provide a most accurate assessment of the organization.

As per claim 2, WAGICS Evaluation Report does not explicitly teach how the preliminary information is acquired, but the tables show that information was collected to

develop preliminary findings of the workshop (principles). It would have been obvious to one of ordinary skill in the art to use several methods to acquire information including a plurality of questionnaires, and acquiring a second set of information from at least one of a plurality of interviews and at least one document review, to develop the plurality of preliminary findings, since it is well known in the art that various methods can be used to collect information. By using several methods of information collection the organization would ensure that the principles evaluated showed a true representation of the workshop and areas that may or may not be a concern for future improvement.

As per claim 3, WAGICS Evaluation Report does not explicitly teach how the preliminary information is acquired, but the tables show that information was collected to develop preliminary findings of the workshop (principles). However, it is old and well known to evaluate information collected and determine if more information is needed. By collating the first set of information, identifying at least one of a preliminary finding and information for further review, and acquiring a second set of information at least partially based upon the information for further review, the organization would ensure that the principles evaluated showed a true representation of the workshop and areas that may or may not be a concern for future improvement.

As per claim 4, WAGICS Evaluation Report teaches the voting comprises voting by a plurality of participants for a conclusion based upon each preliminary finding (table 3, page 6 – participants assess their agreement or disagreement with each of the principles; page 2 shows some of the methods used to collect participant opinions). While the Report does not explicitly teach voting occurs anonymously, it is old and well known for a participant to fill out survey

responses without identifying himself. By voting anonymously, or completing the survey anonymously, one can reflect their honest opinions thereby making the results more accurate.

As per claim 5, WAGICS Evaluation Report teaches voting comprises voting by at least one assessor and at least one member of the organization (page 1, the ELSI (Ethical, Legal and Social Implications branch) put on the workshop and members of the ELSI participated in the assessment (2nd paragraph) as well as the participants of the workshop).

As per claim 6, WAGICS Evaluation Report teaches voting further comprises voting for a valuation associated with each preliminary finding, wherein the valuation associated with each preliminary finding is selected from a group consisting of an agreement with the characterization of the preliminary finding and a disagreement with the associated characterization of the preliminary finding, and wherein said developing the plurality of final findings are further based upon said voting for the valuation based upon the characterization associated with each preliminary finding. (table 3, page 6 – participants assess their agreement or disagreement with each of the principles and their inherent characterizations; the table reflects the final findings wherein percentages are used to show overall agreement or disagreement with each of the principles)

Claims 7-12 are the computer program product for performing the method of claims 1-6, respectively. While the WAGICS Evaluation Report does not explicitly teach a computer program used to collect information, vote and present results, it would have been obvious to one of ordinary skill in the art at the time of the invention to automate the known process of collecting information, voting and displaying results since it has generally been recognized that merely providing an automatic means to replace a manual activity which accomplishes the same

result is not sufficient to distinguish over the prior art, *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). In addition, WAGICS does not explicitly teach that the findings are labeled with the characterizations. However, examiner takes official notice that since each finding in the WAGICS report is written in such a way so as to include an inherent characterization, i.e., “suggested reading were *useful* in accomplishing workshop goals” inherently conveys a strength, it would have been obvious to one of ordinary skill in the art to actually label the findings. The inclusion of a label would provide more information for the assessor to enable him or her to provide a most accurate assessment of the organization.

As per claim 13, while the WAGICS Evaluation Report does not explicitly teach the first executable portion is adapted to at least partially acquire information via a wide area network (WAN), wherein the second executable portion is adapted to present the plurality of developed preliminary findings via the WAN, and wherein the third executable portion is adapted for voting via the WAN, it would have been obvious to one of ordinary skill in the art at the time of the invention to conduct the process using a network such as the Internet since the Internet would allow the organization to collect information, present findings and perform voting from anywhere in the world.

As per claim 14, while the WAGICS Evaluation Report does not explicitly teach the use of a WAN comprising the Internet, it would have been obvious to one of ordinary skill in the art at the time of the invention to conduct the process using a network such as the Internet since the Internet would allow the organization to collect information, present findings and perform voting from anywhere in the world.

As per claim 15, Evaluation Report teaches acquiring information concerning the organization and the process (table 3, page 6 – the principles that are evaluated are inherently reflective of the organization and the process); developing a plurality of preliminary findings based upon the information, wherein each preliminary finding has an associated characterization (table 3, page 6 – the principles that are evaluated are inherently characterize the organization and the process); voting for a valuation associated with each preliminary finding, and wherein the valuation is selected from a group consisting of an agreement with the characterization of the preliminary finding and a disagreement with the characterization of the preliminary finding(table 3, page 6 – participants assess their agreement or disagreement with each of the principles); and developing a the at least one assessment, wherein each assessment has the characterization, and wherein the associated characterization of each assessment is based on the voting for the valuation associated with each preliminary finding (table 3, page 6 – the table reflects the final findings wherein percentages are used to show overall agreement or disagreement with each of the principles). While the WAGICS Evaluation Report does not disclose that the voting occurs electronically, it is old and well known in the art of survey and evaluation to collect responses in several methods including electronic form. It would have been obvious to one of ordinary skill in the art to perform the voting step electronically to speed the process and to make the voting process more convenient for the participants. In addition, WAGICS does not explicitly teach that the findings are labeled with the characterizations. However, examiner takes official notice that since each finding in the WAGICS report is written in such a way so as to include an inherent characterization, i.e., “suggested reading were *useful* in accomplishing workshop goals” inherently conveys a strength, it would have been obvious to one of ordinary skill in the art to

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actually label the findings. The inclusion of a label would provide more information for the assessor to enable him or her to provide a most accurate assessment of the organization.

As per claim 16, WAGICS Evaluation Report does not explicitly teach how the preliminary information is acquired, but the tables show that information was collected to develop preliminary findings of the workshop (principles). It would have been obvious to one of ordinary skill in the art to use several methods to acquire information including a plurality of questionnaires, and acquiring a second set of information from at least one of a plurality of interviews and at least one document review, to develop the plurality of preliminary findings, since it is well known in the art that various methods can be used to collect information. By using several methods of information collection the organization would ensure that the principles evaluated showed a true representation of the workshop and areas that may or may not be a concern for future improvement.

As per claim 17, WAGICS Evaluation Report does not explicitly teach how the preliminary information is acquired, but the tables show that information was collected to develop preliminary findings of the workshop (principles). However, it is old and well known to evaluate information collected and determine if more information is needed. By collating the first set of information, identifying at least one of a preliminary finding and information for further review, and acquiring a second set of information at least partially based upon the information for further review, the organization would ensure that the principles evaluated showed a true representation of the workshop and areas that may or may not be a concern for future improvement.

As per claim 18, WAGICS Evaluation Report teaches the voting comprises voting by a plurality of participants for a conclusion based upon each preliminary finding (table 3, page 6 – participants assess their agreement or disagreement with each of the principles; page 2 shows some of the methods used to collect participant opinions). While the Report does not explicitly teach voting occurs anonymously, it is old and well known for a participant to fill out survey responses without identifying himself. By anonymously voting, or completing the survey, one can reflect their honest opinions thereby making the results more accurate.

As per claim 19, WAGICS Evaluation Report teaches voting comprises voting by at least one assessor and at least one member of the organization (page 1, the ELSI (Ethical, Legal and Social Implications branch) put on the workshop and members of the ELSI participated in the assessment (2nd paragraph) as well as the participants of the workshop).

As per claim 20, WAGICS Evaluation Report teaches voting further comprises voting for a conclusion associated with each preliminary finding, wherein the conclusion associated with each preliminary finding is selected from a group consisting of an agreement with the characterization of the preliminary finding and a disagreement with the associated characterization of the preliminary finding, and wherein the at least one assessment is further based upon said voting for the valuation based upon the characterization associated with each preliminary finding. (table 3, page 6 – participants assess their agreement or disagreement with each of the principles; the table reflects the final findings wherein percentages are used to show overall agreement or disagreement with each of the principles)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnna R. Loftis whose telephone number is 571-272-6736. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JL
5/8/07

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